

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 9, 1999
at 9:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 53, HB 76, HB 106, 3/7/1999
Executive Action:

HEARING ON HB 106

Sponsor: REP. LINDA MCCULLOCH, HD 70, Missoula

Proponents: Wilbur Rehman, Criminal Justice Information
Services Project, Department of Justice

Opponents: None

Opening Statement by Sponsor:

REP. LINDA MCCULLOCH, HD 70, Missoula, introduced HB 106 which enacts adoption and implementation of the National Crime Prevention and Privacy Compact. There are conflicting views regarding who should control each state's criminal history records. Should this be handled by the state or by the FBI? The Compact allows states to have control of their own criminal history records if they so desire. Currently Montana is required to give all criminal records to the FBI. Anyone who is allowed to check criminal records must go through the FBI, wait a long time for this information to be processed, and then hope it is accurate. Under the Compact, Montana would only need to give the first arrest records to the FBI. Montana would electronically check with another state to obtain an individual's arrest record. The release and use of this information would be governed by Montana laws.

{Tape : 1; Side : A; Approx. Time Counter : 9.08}

Proponents' Testimony:

Wilbur Rehman, Criminal Justice Information Services Project, Department of Justice, provided a handout outlining HB 106, **EXHIBIT(jus53a01)**. On page 3, the definition of "noncriminal justice purposes" explains that this term means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters and national security clearances. This bill only affects noncriminal justice uses of criminal history information. In Montana, the only licenses for employment checks authorized are for lawyers, private security guards, private investigators, state lottery employees, and liquor licenses.

This bill will not change state laws but simply states that there will no longer be a duplicative system. The State of Montana would be the sole repository for criminal justice information.

Article III sets out the responsibilities of the parties. Article IV authorizes records disclosures and repeats what is in current statutes and allows states to determine what will be disseminated. The Department of Justice will disseminate only the information that is allowed by Montana law. Article V sets out the record request procedures and is in current statute. The Council is set up in Article VI and is dominated by state representatives. This is a 15 member council with only four members from the federal government.

The FBI will maintain a national fingerprint file index which will state that there is a record in a certain state, but the FBI itself will no longer maintain criminal history.

{Tape : 1; Side : A; Approx. Time Counter : 9.16}

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. HOLDEN asked what prompted agreement in this matter after the many years of negotiations. **Mr. Rehman** responded that the duplicative system became very cumbersome for the FBI. The states have become more responsible and accurate in providing criminal history records.

SEN. GRIMES asked if it would be necessary to go to each individual state for information on a certain individual. **Mr. Rehman** explained that other states are going through the same process at the same time. The FBI will maintain the index and will automatically route the request to the state that has a record.

CHAIRMAN GROSFIELD questioned how this would work for fingerprints of a nonresident of Montana. **Mr. Rehman** explained that the Department of Justice is tied in with the Western Identification Network which is comprised of 11 western states. Currently, the fingerprint card would be submitted to the FBI. In the future, they would simply check the index maintained by the FBI.

CHAIRMAN GROSFIELD remarked that there have been several bills regarding fingerprint based background checks dealing with health care workers and teachers. These checks would be for noncriminal purposes. The home health care worker bill had the fingerprint requirement removed from the bill in this Committee. The federal law authorizes the same, but Montana has prohibited it. **Mr. Rehman** responded that the Compact would not affect this situation. It is a quandary for the department. It appears that there may be a conflict between federal law and state law on that bill. Legislative Services Division has been asked to review this issue.

If the legislation regarding teachers passes, the department would perform background checks for noncriminal justice purposes on teachers.

{Tape : 1; Side : A; Approx. Time Counter : 9.29}

Closing by Sponsor:

REP. MCCULLOUGH summarized that this changes how the information is maintained and not what information is maintained.

HEARING ON HB 76

Sponsor: **REP. ROGER SOMERVILLE, HD 78, Kalispell**

Proponents: **Mike Voeller, Lee Newspapers and the Montana
Newspaper Association**

Opponents: **Scott Crichton, American Civil Liberties Union**

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, Kalispell, commented that one of his constituents explained to him that she had heard that a sex offender had moved into her neighborhood. To track down the information, she went to the sheriff's department and the city police. It was very difficult for her to find this information. Her children are one and four years old and like to play outside.

He visited with the sheriff, a detective from the police department, and the county attorney regarding the system for tracking and releasing the names of violent sex offenders. The intent of the bill is to make it easier for parents to find out if there is a violent or sexual offender living in the neighborhood.

The state's registration for sexual offenders began in 1989 and for violent offenders in 1995. This was initially handled by the Department of Corrections. After a conviction and before release, the judicial system determines the level of threat that the individual is to society. Level one is low, level two is moderate, and level three is high. The released individual must register within the first ten years after release. If they are convicted a second time, they must register for life. If they change their residence, they have ten days to register with the local law enforcement officials.

In 1997, the registration system was moved to the Department of Justice. They are now collecting registration data from the county sheriffs and the city police departments. Later this summer the department will be providing sexual offender rosters to the counties and cities. Individuals registered in his area include the following: Kalispell - 60, Columbia Falls - 40, and Whitefish - 30.

The actual address is not listed for a level two offender. The name and a photograph are provided. For level three offenders, law enforcement has an obligation to release the name, address, and actual offenses. For level two offenders, the name and approximate location is released. This bill would provide that the actual street address would be released for the level two offender.

REP. SOMERVILLE provided a handout that showed the number of offenders per county in Montana, **EXHIBIT(jus53a02)**. Yellowstone County has approximately 280 offenders; Missoula County has over 220 offenders; Cascade County has over 210 offenders; and Lewis and Clark has approximately 80 offenders.

He also provided information currently on the Internet in North Carolina regarding sex offenders, **EXHIBIT(jus53a03)**. This provides the name, alias names, address, physical and numeric identifiers, and offenses.

{Tape : 1; Side : A; Approx. Time Counter : 9.39}

Proponents' Testimony:

Mike Voeller, Lee Newspapers and the Montana Newspaper Association, rose in support of the bill from the standpoint of the public's right to know this information and not because the newspapers want to publish the information. That is an individual decision that a newspaper would make similarly to information regarding rape victims.

Opponents' Testimony:

Scott Crichton, American Civil Liberties Union, presented his written testimony, **EXHIBIT(jus53a04)**. It is important not to confuse registration requirements with notification requirements. The people who are arrested for sex offenses are not strangers. Ninety-five percent of the people who are arrested for sex offenses are your brothers, uncles, and family friends.

The law that was originally passed was to restrict the rights of these offenders with the judiciary's involvement and the judiciary would determine whether or not an offender is a high, low, or medium risk. After serving five years in prison, the offender should not be exiting the prison with the same level of risk of reoffense as when that person entered. Currently, law enforcement determines notification.

To deal with sex offense in Montana, it is necessary to put the money in the prison system to make sure that there is adequate

and competent professional counseling for the offenders who need it. This is an illness. Persons who remain dry drunks stay that way because they continue to counsel, attend group therapy, and admit and share their problems in a supportive environment. These people can stay dry when they deal with their demons. The same thing can happen with sex offenders.

{Tape : 1; Side : B; Approx. Time Counter : 9.52}

Questions from Committee Members and Responses:

SEN. GRIMES asked the difference between level two and level three offenders. **Mr. Crichton** urged the committee to request testimony from professionals who are involved in the treatment and designation of sex offenders. He added that **Sandy Heaton** at the Montana State Prison would be very informed.

SEN. GRIMES remarked that he is sympathetic with the situation and believes that there is hope for anyone under the right conditions. This bill is addressing the rights of persons who live in a neighborhood where their children should be able to run up and down the sidewalks and know that their neighborhood is safe. **Mr. Crichton** agreed that this is a discussion of competing rights. There is a constitutional right that an individual who is convicted of an offense and serves time for the crime, then has their full rights restored. This has been blurred for sex offenders. They are never out from under the shadow of the department. Originally, a sitting judge was the one to make a neutral decision regarding the assessments of the person's risk to society. A 19 year old who served his time and wanted to go home to a small town and live with his parents would result in this person's parents now being targets. This person's ability to integrate into the town where the person's base of support is could be biased by law enforcement's position, especially if they were the ones to prosecute in the first place.

SEN. DOHERTY agreed that the committee needed more clarification regarding the difference between the classes, who made the assessment, and what information was available for each class of offender. **Mike Mahoney, Warden at Montana State Prison,** responded that not everyone coming into the prison is amenable to treatment. The prison is the only residential treatment program for sex offenders. Some offenders refuse to take treatment because they have been advised by legal counsel not to participate. Level 3 offenders would not have participated in the program or the clinicians who run the programs believe the individual has not availed himself to an appropriate level of treatment to reduce their risk factors in returning to the community.

SEN. DOHERTY remarked that if the concern is that individuals have enough knowledge to protect their families, why have classes of offenders. **REP. SOMERVILLE** responded that the intent of the bill was not to change the classification system on sexual offenders. For the level two offender, the address may be released. For a level three offender, the agency shall give public notification. There is still a distinction between the levels.

CHAIRMAN GROSFIELD added that this bill amends Section 508. Section 509 contains information regarding registration. Prior to sentencing a person, the department or a sexual offender evaluator provides the court with an evaluation report and recommends the level. Level one is where the risk of repeat sexual offense is low. Level two has a moderate risk and level three has a high risk factor, there is a threat to public safety, and the evaluator believes the offender is a sexually violent predator. Upon sentencing the defendant, the court reviews the report and designates the offender at the appropriate level. An offender who is designated as level two or level three, can petition the sentencing court to change the designation if the offender is enrolled in and has successfully completed treatment. The court may change the offender's designation if the court finds clear and convincing evidence.

SEN. DOHERTY recounted that for the level two offender, the operative word is that the agency "may" disseminate the information to the public. For the level three offender, the agency "shall" give the information to the public. **Mr. Crichton** questioned the criteria upon which the agency would base its discretionary choice. He believed there would be unequal treatment from one police department to another.

SEN. DOHERTY maintained that the sheriff's office would most likely be very willing to provide this information. **REP. SOMERVILLE** responded that the Department of Justice is implementing a new program that will provide a roster alphabetically by last name or address.

Mike Batista, Department of Justice, explained that they manage the sexual and violent offender registry program. The evaluation form which is presented to the sentencing court provides information regarding prior offenses, whether the offender has shown remorse for the crime, etc.

{Tape : 1; Side : B; Approx. Time Counter : 10:10}

Closing by Sponsor:

REP. SOMERVILLE remarked that another class of individuals who may need to know who is living in the neighborhood is the elderly single woman. He provided a letter he received from **Jane Christman, Dutton**, in support of this bill, **EXHIBIT(jus53a05)**.

HEARING ON HB 53

Sponsor: REP. BOB CLARK, HD 8, Ryegate

Proponents: Mike Mahoney, Warden of the Montana State Prison
Mike Voeller, Lee Newspapers
Betty Waddell, Montana Association of Churches

Opponents: Scott Crichton, American Civil Liberties Union

Opening Statement by Sponsor:

REP. BOB CLARK, HD 8, Ryegate, introduced HB 53. This bill will eliminate the potential last minute appeals for inmates sentenced to death, an ethical dilemma for some physicians, and provide victims the same rights as the condemned to designate witnesses at an execution. This bill provides that a coroner, rather than a physician pronounce death at an execution. Most medical organizations oppose physician participation in executions and consider participation to be unethical. Current law mandates that there be 12 witnesses at an execution, three of whom may be chosen by the condemned. If a condemned individual did not have three people to invite, this would allow for an appeal. The bill allows for three members of the Montana media. One witness would represent the Associated Press. The department would be able to reject selected witnesses if they pose a security risk. For example, a condemned prisoner may want another prisoner to be a witness.

Proponents' Testimony:

Mike Mahoney, Warden of the Montana State Prison, remarked that it is more appropriate to have a coroner involved in the process and this would alleviate the need to have a physician present. This bill also provides authority for the department to identify people who would be inappropriate to be involved as witnesses. A fellow death row inmate may not be an appropriate person to be a witness in a capital case.

{Tape : 1; Side : B; Approx. Time Counter : 10.21}

Mike Voeller, Lee Newspapers, remarked that currently the department permits four members of the news media to witness the execution, allowing for a representative of a national or international news media. The bill speaks to three members of the news media. They would like those three members to be members of the Montana media, with one designated the Associated Press representative. There is a Canadian on death row. If someone from Canada wanted to cover the execution, perhaps this person could use one of the slots for the 12 witnesses if all the slots were not being used.

Betty Waddell, Montana Association of Churches, related that they opposed the bill as first written but can support it with the amendments added in the House Judiciary Committee. She added that she has heard stories of things that can go wrong and believed it would be better to have a physician present as opposed to a coroner. She has done some research and has been told that coroners are well trained and able to handle the situation.

{Tape : 1; Side : B; Approx. Time Counter : 10.24}

Opponents' Testimony:

Scott Crichton, American Civil Liberties Union, commented that this legislation acknowledges the rights of the victim but also acknowledges that a new victim is being created. The execution of the convicted creates new victims who have years to anticipate the demise of their loved one. It is important not to be lulled into the notion that this practice is now more humane and less violent than when people were hung. Lethal injection has all the appearances of a medical procedure and yet there are serious conflicts within the medical community about participating in any part of that procedure. We need to examine the conflicts of the medical community, the legal community, and the religious community. If something horrible happened, there could be a real dilemma without a doctor present. He asked that the licensed physician be kept as part of the law.

Questions from Committee Members and Responses:

SEN. DOHERTY maintained that if one of the arguments for this bill is to reduce the opportunity for appeal at the last minute, giving the department the discretion to approve or disapprove of witnesses may open up the possibility of appeal. He questioned if any other states had adopted similar language. **Warden Mahoney** stated that for him to disapprove a witness, this would need to address a penalogical interest such as the safe operation of the institution or something in the individual's background which

would merit denial of access to the process. He believed there would be adequate time to address these issues and prevent an appeal in that regard.

SEN. BISHOP raised the concern of a coroner not showing up at an execution. **Warden Mahoney** responded that the coroner has been present at each of the executions with which he has been involved. He always has a back up for that position.

SEN. HALLIGAN remarked that a physician would still be in the room to turn off the equipment. **Warden Mahoney** explained that they have worked with medically trained people. These people have been trained to handle the proper methodology of introducing legal injections. There is no need for a physician to be present.

CHAIRMAN GROSFIELD remarked that the bill did not address any time frames regarding selection of witnesses. **Warden Mahoney** explained that a policy and procedure manual has been developed and is followed. Because of the necessary security elements, this is not a public document. They start working with the condemned well in advance on technical issues.

CHAIRMAN GROSFIELD questioned whether Title 46 contained the authority to develop the rules and policy and if it didn't it might be necessary to provide the same. He further questioned whether page 2, lines 11-12 of the bill, would mean that staff would be excluded. The language would include the department staff as part of the 12 witnesses. **Warden Mahoney** responded that there were security personnel present in the event there would be problems with any of the witnesses or any procedural problems.

SEN. DOHERTY suggested that there be a distinction between staff and witnesses. There could be more staff present but there could only be "x" number of people who would be classified as a witness.

Closing by Sponsor:

REP. CLARK remarked that every county has a designated deputy coroner who could be the back up for this process.

ADJOURNMENT

Adjournment: 10:43 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus53aad)